



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/T5150/C/23/3314224

70 Grosvenor Crescent, London NW9 9DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Murtaza Visram against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 9 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding containing a kitchen and bathroom to rear of the premises.
 - The requirements of the notice are to:
STEP 1 Permanently remove the bathroom and bathroom facilities, kitchen and kitchen facilities, and all internal partition walls located within the outbuilding to the rear of the premises.
STEP 2 Remove all items and debris, arising from that removal, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the grounds of appeal and points in dispute.
3. Article 3 and Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the provision of any building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse, subject to conditions and limitations.
4. The appellant stated that the outbuilding was constructed for a purpose incidental to the enjoyment of the dwellinghouse. This is an argument more pertinent to an appeal on ground (c) albeit no substantive case under that ground was made out. In any case, since this was raised in the appellant's initial submission on which the Council has had the opportunity to comment, I shall address this as though that ground had been pleaded.

The 'hidden' appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant

to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.

6. Since the appeal was made, the appellant submitted photographs which show that the kitchen facilities have been removed, and there are three pieces of gym equipment and an office type desk in the outbuilding. However, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued.
7. The Government's Technical Guidance¹ states that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
8. In addition, case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse as such, not to buildings required for a purpose integral to the use as a dwellinghouse. Whether this is the case will depend on a fact and degree assessment. Incidental uses are not distinguished by scale, although that may be relevant.
9. The outbuilding is located a relatively short distance from the house. At the time of the Council's visit, as evidenced by their photographs, the outbuilding included a fitted kitchen with many of the facilities you would expect to find in a kitchen in the house, and a bathroom. Whilst there was a desk/office area and treadmill in the images, given the extent of primary accommodation provided, a significant proportion of the outbuilding was for purposes integral to the use as a dwellinghouse, as opposed to incidental uses.
10. Accordingly, on the balance of probabilities, the outbuilding is not reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. The development does not therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.
11. Since the outbuilding is not development that is permitted by any development order and there is no record of planning permission having been granted for it, the appeal on ground (c) therefore fails.

The appeal on ground (f)

12. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
13. The Council stated that the purpose of the notice is to remedy injury to amenity. However, the effect of the requirements is that the outbuilding is altered so that it reflects that which could have been built as permitted development by virtue of Part 1 Class E of the GPDO. Accordingly, the purpose of the notice is to remedy the breach of planning control, that is by making the development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, which includes planning permission granted by the GPDO.

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

14. The appellant's case is that the requirements should be varied to enable them to retain the partitions and bathroom facilities, on the basis that this would have constituted permitted development by virtue of Part 1 Class E of the GPDO.
15. The purpose of the enforcement notice is to remedy the breach of planning control however, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption.
16. As such, whilst acknowledging that permitted development rights cannot be claimed retrospectively, it would have been open to me to vary the requirements of the notice to offer the opportunity to modify the development in accordance with the details submitted and the terms of the permission granted by the GPDO, should such rights represent a realistic fallback position.
17. The appellant's proposed variation would require a consideration about whether the outbuilding, built with a bathroom, would have constituted permitted development by virtue of Part 1 Class E. However, it is not for me, in an appeal on ground (f) to determine whether the outbuilding as altered, would have constituted permitted development.
18. Moreover, since there is no appeal under ground (a) there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). Consequently, whilst I note reference to the appellant's wife's use of the facilities, and the letter of support, these matters have no bearing on my consideration. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
19. In order to remedy the breach of planning control, it is not excessive to require the removal of the bathroom and bathroom facilities, kitchen and kitchen facilities, all internal partition walls, and all resulting materials from the site. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR